

Introduced by Senator Huff

February 27, 2009

An act to amend Sections 13386, 23575, and 23646 of the Vehicle Code, relating to vehicles.

LEGISLATIVE COUNSEL'S DIGEST

SB 598, as introduced, Huff. Vehicles: driving under the influence (DUI): ignition interlock device.

(1) Existing law makes it unlawful to operate a motor vehicle while under the influence of alcohol or drugs, or both, or when the driver has a specified percent, by weight, of alcohol in his or her blood, or if the driver is addicted to the use of any drug. A separate provision makes it unlawful to engage in this conduct and to drive in a certain unlawful manner if that conduct causes bodily injury to a person other than the driver.

Existing law authorizes a court to order a person convicted of a first offense for the above driving under the influence (DUI) violations to install a certified ignition interlock device on any vehicle the person owns or operates, and to prohibit that person from driving a vehicle without one for a period not to exceed 3 years. Once the court orders a person's driving privilege restricted, the person is required to have the ignition interlock device serviced at least once every 60 days, and the installer is required to notify the court if the person fails to comply with the maintenance or calibration requirements 3 or more times.

This bill would require the court to take into consideration the results of a county alcohol and drug problem assessment for a first offense violator who had 0.15% or more, by weight, of alcohol in his or her blood at arrest or a repeat DUI offender in determining the term of the ignition interlock restriction. The bill would require a person required

to have a court ordered ignition interlock device on a vehicle to have the device serviced at least once every 30 days, and the installer would be required to notify the court the first time the person failed to comply with the maintenance or calibration requirements.

(2) Existing law authorizes a person who has been convicted of a DUI violation and the offense occurred within 10 years of one or more separate DUI violations to apply to the Department of Motor Vehicles for a restricted driver's license that prohibits the person from operating a vehicle unless that vehicle is equipped with a functioning certified ignition interlock device. A person whose driving privilege is so restricted by the department is required to have the ignition interlock device serviced at least once every 60 days, and the installer is required to notify the department if the person fails to comply with the maintenance or calibration requirements 3 or more times.

This bill would authorize a person convicted of a DUI violation where the person had 0.15% or more, by weight, of alcohol in his or her blood at arrest to apply to the department for a restricted driver's license that prohibits the person from operating a vehicle unless that vehicle is equipped with a functioning certified ignition interlock device. The bill would require a person with an ignition interlock device on a vehicle pursuant to this provision to have it serviced at least once every 30 days, and the installer would be required to notify the department the first time the person failed to comply with the maintenance or calibration requirements.

(3) Existing law requires the department to develop certain standard forms and procedures with regard to the certified ignition interlock device. The "Option to Install" is required to be sent to repeat offenders along with the mandatory orders of suspension or revocation and include information on alternatives available for early license reinstatement with the installation of an ignition interlock device.

This bill would require that the "Option to Install" also be sent to an offender with 0.15% or more, by weight, of alcohol in his or her blood at arrest.

(4) Existing law authorizes a court to order a person convicted of a DUI violation to attend a county alcohol and drug problem assessment program. If the person is sentenced under DUI provisions for first-time offenders and the assessment program recommends additional treatment, the court is authorized to order the person to complete either an 18 or 30-month driving under the influence program.

This bill would require the court to make the order if the assessment program recommends additional treatment.

(5) Existing law requires a court to order a person convicted of a DUI violation and the offense occurred within 10 years of one or more separate DUI violations to attend a county alcohol and drug problem assessment program.

This bill would additionally require a court to order a person convicted of a DUI violation where the person had 0.15% or more, by weight, of alcohol in his or her blood at arrest to attend a county alcohol and drug problem assessment program.

(6) Because it is a crime to operate a vehicle that is not equipped with a functioning, certified ignition interlock device by a person whose driving privilege is so restricted, the bill would impose a state-mandated local program by expanding the scope of a crime.

(7) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 13386 of the Vehicle Code is amended
2 to read:

3 13386. (a) (1) The Department of Motor Vehicles shall certify
4 or cause to be certified ignition interlock devices required by
5 Article 5 (commencing with Section 23575) of Chapter 2 of
6 Division 11.5 and publish a list of approved devices.

7 (2) (A) The Department of Motor Vehicles shall ensure that
8 ignition interlock devices that have been certified according to the
9 requirements of this section continue to meet certification
10 requirements. The department may periodically require
11 manufacturers to indicate in writing whether the devices continue
12 to meet certification requirements.

13 (B) The department may use denial of certification, suspension
14 or revocation of certification, or decertification of an ignition
15 interlock device in another state as an indication that the

1 certification requirements are not met, if either of the following
2 apply:

3 (i) The denial of certification, suspension or revocation of
4 certification, or decertification in another state constitutes a
5 violation by the manufacturer of Article 2.55 (commencing with
6 Section 125.00) of Chapter 1 of Division 1 of the Title 13 of the
7 California Code of Regulations.

8 (ii) The denial of certification for an ignition interlock device
9 in another state was due to a failure of an ignition interlock device
10 to meet the standards adopted by the regulation set forth in clause
11 (i), specifically Sections 1 and 2 of the model specification for
12 breath alcohol ignition interlock devices, as published by notice
13 in the Federal Register, Vol. 57, No. 67, Tuesday, April 7, 1992,
14 on pages 11774 to 11787, inclusive.

15 (C) Failure to continue to meet certification requirements shall
16 result in suspension or revocation of certification of ignition
17 interlock devices.

18 (b) (1) A manufacturer shall not furnish an installer, service
19 center, technician, or consumer with technology or information
20 that allows a device to be used in a manner that is contrary to the
21 purpose for which it is certified.

22 (2) Upon a violation of paragraph (1), the department shall
23 suspend or revoke the certification of the ignition interlock device
24 that is the subject of that violation.

25 (c) An installer, service center, or technician shall not tamper
26 with, change, or alter the functionality of the device from its
27 certified criteria.

28 (d) The department shall utilize information from an independent
29 laboratory to certify ignition interlock devices on or off the
30 premises of the manufacturer or manufacturer's agent, in
31 accordance with the guidelines. The cost of certification shall be
32 borne by the manufacturers of ignition interlock devices. If the
33 certification of a device is suspended or revoked, the manufacturer
34 of the device shall be responsible for, and shall bear the cost of,
35 the removal of the device and the replacement of a certified device
36 of the manufacturer or another manufacturer.

37 (e) No model of ignition interlock device shall be certified unless
38 it meets the accuracy requirements and specifications provided in
39 the guidelines adopted by the National Highway Traffic Safety
40 Administration.

(f) All manufacturers of ignition interlock devices that meet the requirements of subdivision (e) and are certified in a manner approved by the Department of Motor Vehicles, who intend to market the devices in this state, first shall apply to the Department of Motor Vehicles on forms provided by that department. The application shall be accompanied by a fee in an amount not to exceed the amount necessary to cover the costs incurred by the department in carrying out this section.

(g) The department shall ensure that standard forms and procedures are developed for documenting decisions and compliance and communicating results to relevant agencies. These forms shall include all of the following:

(1) An “Option to Install,” to be sent by the Department of Motor Vehicles to repeat offenders *and offenders with 0.15 percent or more, by weight, of alcohol in his or her blood at arrest* along with the mandatory order of suspension or revocation. This shall include the alternatives available for early license reinstatement with the installation of an ignition interlock device and shall be accompanied by a toll-free telephone number for each manufacturer of a certified ignition interlock device. Information regarding approved installation locations shall be provided to drivers by manufacturers with ignition interlock devices that have been certified in accordance with this section.

(2) A “Verification of Installation” to be returned to the department by the reinstating offender upon application for reinstatement. Copies shall be provided for the manufacturer or the manufacturer’s agent.

(3) A “Notice of Noncompliance” and procedures to ensure continued use of the ignition interlock device during the restriction period and to ensure compliance with maintenance requirements. The maintenance period shall be standardized at ~~60~~ 30 days to maximize monitoring checks for equipment tampering.

(h) Every manufacturer and manufacturer’s agent certified by the department to provide ignition interlock devices shall adopt fee schedules that provide for the payment of the costs of the device by applicants in amounts commensurate with the applicant’s ability to pay.

SEC. 2. Section 23575 of the Vehicle Code is amended to read:

23575. (a) (1) (A) In addition to any other provisions of law, the court may require that a person convicted of a first offense

1 violation of Section 23152 or 23153 install a certified ignition
2 interlock device on any vehicle that the person owns or operates
3 and prohibit that person from operating a motor vehicle unless that
4 vehicle is equipped with a functioning, certified ignition interlock
5 device. The court shall give heightened consideration to applying
6 this sanction to a first offense violator with 0.15 percent or more,
7 by weight, of alcohol in his or her blood at arrest, or with two or
8 more prior moving traffic violations, or to persons who refused
9 the chemical tests at arrest. ~~If the court orders the ignition interlock~~
10 ~~device restriction, the term shall be determined by the court for a~~
11 ~~period not to exceed three years from the date of conviction. The~~
12 ~~court shall notify the Department of Motor Vehicles, as specified~~
13 ~~in subdivision (a) of Section 1803, of the terms of the restrictions~~
14 ~~in accordance with subdivision (a) of Section 1804. The~~
15 ~~Department of Motor Vehicles shall place the restriction in the~~
16 ~~person's records in the Department of Motor Vehicles.~~

17 *(B) If the court orders the ignition interlock device restriction,*
18 *the term shall be determined by the court for a period not to exceed*
19 *three years from the date of conviction. For first offense violators*
20 *with 0.15 percent or more, by weight, of alcohol in his or her blood*
21 *at arrest and for repeat offenders, the court shall take into*
22 *consideration the results of a county alcohol and drug problem*
23 *assessment pursuant to subdivision (b) of Section 23646 in*
24 *determining the term of the ignition interlock restriction.*

25 *(C) The court shall notify the Department of Motor Vehicles,*
26 *as specified in subdivision (a) of Section 1803, of the terms of the*
27 *restrictions in accordance with subdivision (a) of Section 1804.*

28 *(D) The Department of Motor Vehicles shall place the restriction*
29 *in the person's records in the Department of Motor Vehicles.*

30 (2) The court shall require a person convicted of a violation of
31 Section 14601.2 to install an ignition interlock device on any
32 vehicle that the person owns or operates and prohibit the person
33 from operating a motor vehicle unless the vehicle is equipped with
34 a functioning, certified ignition interlock device. The term of the
35 restriction shall be determined by the court for a period not to
36 exceed three years from the date of conviction. The court shall
37 notify the Department of Motor Vehicles, as specified in
38 subdivision (a) of Section 1803, of the terms of the restrictions in
39 accordance with subdivision (a) of Section 1804. The Department

1 of Motor Vehicles shall place the restriction in the person's records
2 in the Department of Motor Vehicles.

3 (b) The court shall include on the abstract of conviction or
4 violation submitted to the Department of Motor Vehicles under
5 Section 1803 or 1816, the requirement and term for the use of a
6 certified ignition interlock device. The records of the department
7 shall reflect mandatory use of the device for the term ordered by
8 the court.

9 (c) The court shall advise the person that installation of an
10 ignition interlock device on a vehicle does not allow the person to
11 drive without a valid driver's license.

12 (d) A person whose driving privilege is restricted by the court
13 pursuant to this section shall arrange for each vehicle with an
14 ignition interlock device to be serviced by the installer at least
15 once every ~~60~~ 30 days in order for the installer to recalibrate and
16 monitor the operation of the device. The installer shall notify the
17 court if the device is removed or indicates that the person has
18 attempted to remove, bypass, or tamper with the device, or if the
19 person fails ~~three or more times~~ to comply with a requirement for
20 the maintenance or calibration of the ignition interlock device.
21 There is no obligation for the installer to notify the court if the
22 person has complied with all of the requirements of this article.

23 (e) The court shall monitor the installation and maintenance of
24 an ignition interlock device restriction ordered pursuant to
25 subdivision (a) or (l). If a person fails to comply with the court
26 order, the court shall give notice of the fact to the department
27 pursuant to Section 40509.1.

28 (f) (1) Pursuant to Section 13352, if a person is convicted of a
29 violation of Section 23152 or 23153, and the offense occurred
30 within 10 years of one or more separate violations of Section 23152
31 or 23153 that resulted in a conviction, the person may apply to the
32 Department of Motor Vehicles for a restricted driver's license
33 pursuant to Section 13352 that prohibits the person from operating
34 a motor vehicle unless that vehicle is equipped with a functioning
35 ignition interlock device, certified pursuant to Section 13386. The
36 restriction shall remain in effect for at least the remaining period
37 of the original suspension or revocation and until all reinstatement
38 requirements in Section 13352 are met.

39 (2) *If a person is convicted of a violation of Section 23152 or*
40 *23153 and the person had 0.15 percent or more, by weight, of*

1 *alcohol in his or her blood at the time of arrest, the person may*
2 *apply to the Department of Motor Vehicles for a restricted driver's*
3 *license that prohibits the person from operating a motor vehicle*
4 *unless that vehicle is equipped with a functioning ignition interlock*
5 *device, certified pursuant to Section 13386. The restriction shall*
6 *remain in effect for at least the remaining period of the original*
7 *suspension or revocation and until all reinstatement requirements*
8 *in Section 13352 are met.*

9 *(A) In addition to Section 13352.4, the conditions for a restricted*
10 *driver's license described in subparagraphs (C), (D), and (G) of*
11 *paragraph (3) of subdivision (a) of Section 13352 shall apply to*
12 *a conviction under Section 23152.*

13 *(B) The conditions for a restricted driver's license described in*
14 *subparagraphs (B) to (F), inclusive, of paragraph (4) of subdivision*
15 *(a) of Section 13352 shall apply to a conviction under Section*
16 *23153.*

17 ~~(2)~~

18 *(3) Pursuant to subdivision (g), the Department of Motor*
19 *Vehicles shall immediately terminate the restriction issued pursuant*
20 *to Section 13352 and shall immediately suspend or revoke the*
21 *privilege to operate a motor vehicle of a person who attempts to*
22 *remove, bypass, or tamper with the device, who has the device*
23 *removed prior to the termination date of the restriction, or who*
24 *fails three or more times to comply with any requirement for the*
25 *maintenance or calibration of the ignition interlock device ordered*
26 *pursuant to Section 13352. The privilege shall remain suspended*
27 *or revoked for the remaining period of the originating suspension*
28 *or revocation and until all reinstatement requirements in Section*
29 *13352 are met.*

30 *(g) A person whose driving privilege is restricted by the*
31 *Department of Motor Vehicles pursuant to Section 13352 shall*
32 *arrange for each vehicle with an ignition interlock device to be*
33 *served by the installer at least once every ~~60~~ 30 days in order for*
34 *the installer to recalibrate the device and monitor the operation of*
35 *the device. The installer shall notify the Department of Motor*
36 *Vehicles if the device is removed or indicates that the person has*
37 *attempted to remove, bypass, or tamper with the device, or if the*
38 *person fails ~~three or more times~~ to comply with any requirement*
39 *for the maintenance or calibration of the ignition interlock device.*
40 *There is no obligation on the part of the installer to notify the*

1 department or the court if the person has complied with all of the
2 requirements of this section.

3 (h) Nothing in this section permits a person to drive without a
4 valid driver's license.

5 (i) The Department of Motor Vehicles shall include information
6 along with the order of suspension or revocation for *a person*
7 *convicted of having 0.15 percent or more, by weight, of alcohol*
8 *in his or her blood at arrest, or for repeat offenders* informing
9 them that after a specified period of suspension or revocation has
10 been completed, the person may either install an ignition interlock
11 device on any vehicle that the person owns or operates or remain
12 with a suspended or revoked driver's license.

13 (j) Pursuant to this section, an out-of-state resident who
14 otherwise would qualify for an ignition interlock device restricted
15 license in California shall be prohibited from operating a motor
16 vehicle in California unless that vehicle is equipped with a
17 functioning ignition interlock device. An ignition interlock device
18 is not required to be installed on any vehicle owned by the
19 defendant that is not driven in California.

20 (k) If a person has a medical problem that does not permit the
21 person to breathe with sufficient strength to activate the device,
22 then that person shall only have the suspension option.

23 (l) This section does not restrict a court from requiring
24 installation of an ignition interlock device and prohibiting operation
25 of a motor vehicle unless that vehicle is equipped with a
26 functioning, certified ignition interlock device for a person to
27 whom subdivision (a) or (b) does not apply. The term of the
28 restriction shall be determined by the court for a period not to
29 exceed three years from the date of conviction. The court shall
30 notify the Department of Motor Vehicles, as specified in
31 subdivision (a) of Section 1803, of the terms of the restrictions in
32 accordance with subdivision (a) of Section 1804. The Department
33 of Motor Vehicles shall place the restriction in the person's records
34 in the Department of Motor Vehicles.

35 (m) For the purposes of this section, "vehicle" does not include
36 a motorcycle until the state certifies an ignition interlock device
37 that can be installed on a motorcycle. Any person subject to an
38 ignition interlock device restriction shall not operate a motorcycle
39 for the duration of the ignition interlock device restriction period.

(n) For the purposes of this section, “owned” means solely owned or owned in conjunction with another person or legal entity. For purposes of this section, “operates” includes operating a vehicle that is not owned by the person subject to this section.

(o) For the purposes of this section, “bypass” includes, but is not limited to, either of the following:

(1) A combination of failing or not taking the ignition interlock device rolling retest three consecutive times.

(2) An incidence of failing or not taking the ignition interlock device rolling retest, when not followed by an incidence of passing the ignition interlock rolling retest prior to turning off the vehicle’s engine.

SEC. 3. Section 23646 of the Vehicle Code is amended to read:

23646. (a) Each county alcohol program administrator or the administrator’s designee shall develop, implement, operate, and administer an alcohol and drug problem assessment program pursuant to this article for each person described in subdivision (b). The alcohol and drug problem assessment program may include a referral and client tracking component.

(b) (1) The court shall order a person to participate in an alcohol and drug problem assessment program pursuant to this section and Sections 23647 to 23649, inclusive, and the related regulations of the State Department of Alcohol and Drug Programs, *if the person was convicted of a violation of Section 23152 or 23153 and had 0.15 percent or more, by weight, of alcohol in his or her blood at arrest, or if the person was convicted of a violation of Section 23152 or 23153 that occurred within 10 years of a separate violation of Section 23152 or 23153 that resulted in a conviction.*

(2) A court may order a person convicted of a violation of Section 23152 or 23153 to attend an alcohol and drug problem assessment program pursuant to this article.

(3) (A) The court shall order a person convicted of a violation of Section 23152 or 23153 who has previously been convicted of a violation of Section 23152 or 23153 that occurred more than 10 years ago, or has been previously convicted of a violation of subdivision (f) of Section 647 of the Penal Code, to attend and complete an alcohol and drug problem assessment program under this article. In order to determine whether a previous conviction for a violation occurring more than 10 years ago exists, the court shall rely on state summary criminal history information, local

1 summary history information, or records made available to the
2 judge through the district attorney.

3 (B) If the program assessment recommends additional treatment,
4 the court ~~may~~ *shall* order a person sentenced under either Section
5 23538 or 23556 to enroll *in*, participate *in*, and complete either of
6 the programs described ~~under paragraph (4) of~~ *in* subdivision (b)
7 of Section 23542.

8 (c) The State Department of Alcohol and Drug Programs shall
9 establish minimum specifications for alcohol and other drug
10 problem assessments and reports.

11 SEC. 4. No reimbursement is required by this act pursuant to
12 Section 6 of Article XIII B of the California Constitution because
13 the only costs that may be incurred by a local agency or school
14 district will be incurred because this act creates a new crime or
15 infraction, eliminates a crime or infraction, or changes the penalty
16 for a crime or infraction, within the meaning of Section 17556 of
17 the Government Code, or changes the definition of a crime within
18 the meaning of Section 6 of Article XIII B of the California
19 Constitution.